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In re Application of	:	
OHYANAGI et al	:	DECISION ON PETITION
Application No. 09/964,809	:	
Filed: September 28, 2001	:	
Attorney Docket No. 500.40681X00	:	

This is a decision on the petition filed February 2, 2005, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is GRANTED.

This application was held abandoned for failure to timely reply to the Election/Restriction Requirement Office action mailed November 24, 2003, setting forth a one-month period of response. A Notice of Abandonment was mailed on October 6, 2004.

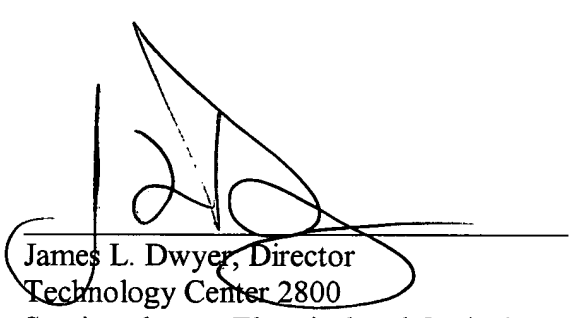
Petitioner asserts that a response to the Election/Restriction Requirement Office action was timely filed in the US Patent and Trademark Office (USPTO) on December 24, 2003. This is evidenced by the post card receipt indicating receipt of a response to the Office action on December 24, 2003.

The response to the Election/Restriction Requirement Office action acknowledged as having been received in the USPTO on December 24, 2003 is not of record in the application file and cannot be located. However, M.P.E.P. §503 states, "A post card receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the response to the Election/Restriction Requirement Office action was timely received in the PTO but lost after receipt thereof.

For the above reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. Inconvenience to petitioner is regretted.

The application file is being forwarded to the technical support staff for processing the response to the November 24, 2003 Office action. From there, it will be returned to the examiner for further prosecution.

Questions regarding this decision should be directed to Jose' G. Dees at (571) 272-1569.



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